

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL J. POWERS, JASMINE WOODS,)
KEITH ROSE, AND MICHAEL LHOTAK,)
)
Plaintiff,)
)
vs.) Case No.: 4:16-cv-1299
)
CITY OF FERGUSON, STEPHANIE KARR,)
J. PATRICK CHASSAING, TIM HARRIS,)
SEAN GIBBONS, AND JOHN DOE)
DEFENDANTS 1-3,)
)
Defendants.)

***PARTIAL MOTION TO DISMISS OF DEFENDANTS CITY OF
FERGUSON, STEPHANIE KARR, J. PATRICK CHASSAING, TIM
HARRIS, AND SEAN GIBBONS***

COME NOW, Defendants, City of Ferguson (“City”), Stephanie Karr (“Prosecutor Karr”), J. Patrick Chassaing (“Prosecutor Chassaing”), Ferguson Police Sergeant Tim Harris (Sgt. Harris), and Ferguson Police Officer Sean Gibbons (“Officer Gibbons”) (collectively the “Defendants”), and for their Partial Motion to Dismiss Plaintiffs’ Complaint, state as follows:

1. On August 9, 2016, Plaintiffs filed their Complaint purporting to raise seven Counts, alleging the following:

Count I – Against the Defendant Police Officers for Unlawful Seizure/False Arrests pursuant to 42 U.S.C. § 1983 (First, Fourth, and Fourteenth Amendments);

Count II – Against all Defendants for Malicious Prosecution pursuant to 42 U.S.C. § 1983 (Fourth, Fifth, and Fourteenth Amendments);

Count III – All Defendants for Conspiracy to Violate Rights pursuant to 42 U.S.C. § 1983;

Count IV – Against Ferguson for Fourth, Fifth, and Fourteenth Amendment Violations pursuant to 42 U.S.C. § 1983;

Count V – Against all Defendants for Malicious Prosecution Under Missouri Law;

Count VI – Against all Defendants for Abuse of Process Under Missouri Law; and

Count VII – Against Ferguson, Harris, Gibbons, and John Doe Defendants for False Arrest/Imprisonment Under Missouri Law.

2. Plaintiffs failed to allege the capacity in which they have sued the Defendants, and therefore this Court must construe this suit as brought against the Defendants in their official capacities only.
3. With this construction, this Court must partially dismiss Plaintiffs' Complaint as follows:
 - A. Suits against individuals in their official capacities are redundant to claims against the City of Ferguson, and should therefore be dismissed;
 - B. Plaintiffs' claims regarding malicious prosecution purportedly raised under federal law should be dismissed for failure to state a claim (Count II);
 - C. Plaintiffs' claims against Defendants, as they are all pertaining to employees of the City of Ferguson, should be dismissed due to the intracorporate conspiracy doctrine (Count III);
 - D. Plaintiffs' claims against Prosecutors Karr and Chassaing are barred by absolute immunity; and
 - E. Plaintiffs' request for punitive damages should be dismissed as a matter of law.
4. In the event this Court grants leave to Plaintiffs to amend their Complaint regarding the capacity in which Defendants are sued, the Defendants respectfully request that this Court require Plaintiff to make a more specific and definite statement regarding the portion of Plaintiffs' Complaint in Count I pertaining to the First Amendment, as no

specific speech is identified that is attributed to each Plaintiff which is subject to the claim. Fed. R. Civ. P. 12(e).

5. In the event this Court grants leave to Plaintiffs to amend their Complaint, Defendants are similarly entitled to dismissal for the following reasons:

- A. Absolute immunity bars Counts II, III, V, and VI against Prosecutors Karr and Chassaing;
- B. Plaintiffs' claims regarding malicious prosecution purportedly raised under federal law should be dismissed for failure to state a claim and due to qualified immunity to individual defendants (Count II);
- C. Plaintiffs' claims against Defendants, as they are all pertaining to employees of the City of Ferguson, should be dismissed due to the intracorporate conspiracy doctrine (Count III); and
- D. Plaintiffs have failed to state a claim for relief under Missouri law for abuse of process against Sgt. Harris and Officer Gibbons (Count VI).

WHEREFORE, Defendants request that this Court dismiss Count I; II; III; portions of Counts IV, V, and VI pertaining to the prosecutorial functions of Defendants Karr and Chassaing; and all the individually named defendants in Counts V, VI, and VII (the only remaining counts, with respect to how Plaintiffs have pleaded, would be portions of IV not pertinent to the prosecutorial function, and counts V, VI, and VII against the City), that Plaintiffs provide a more definite statement identifying speech subject to Count I, and for whatever further relief this Court deems just and proper.

/s/Peter J. Dunne

Peter J. Dunne #31482MO

Robert T. Plunkert #62064MO

PITZER SNODGRASS, P.C.

Attorney for Defendants City of Ferguson,
Stephanie Karr, J. Patrick Chassaing, Tim Harris,
and Sean Gibbons

100 South Fourth Street, Suite 400

St. Louis, Missouri 63102-1821

(314) 421-5545

(314) 421-3144 (Fax)

I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 9th day of September, 2016, to be served by operation of the Court's electronic filing system upon the following or U.S. mail for parties not registered with CM/ECF:

Mr. Douglas P. Dowd
Mr. Alex M. Lumaghi
211 North Broadway, Suite 4050
St. Louis, Missouri 63102
doug@dowdlaw.net
alex@dowdlaw.net
Attorneys for Plaintiffs

Mr. Thomas B. Harvey
Mr. Michael-John Voss
Mr. Blake A. Strode
Mr. Nathaniel Carroll
Mr. Edward J. Hall
ArchCity Defenders
1210 Locust Street
St. Louis, Missouri 63103
tharvey@archcitydefenders.org
mjvoss@archcitydefenders.org
bstrode@archcitydefenders.org
ncarroll@archcitydefenders.org
ehall@archcitydefenders.org
Co-counsel for Plaintiffs

/s/Peter J. Dunne
